Editor's note: Reconsideration denied by Order dated Oct. 25, 1983

LARRY WHITE

IBLA 83-203, 83-204 Decided April 27, 1983

Appeals from decisions of New Mexico State Office, Bureau of Land Management, rejecting high bids for competitive oil and gas leases. NM 54456 (OK) and NM 54461 (OK).

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

   The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record shows a rational basis for the conclusion that the amount of the bid was inadequate.
2. Oil and Gas Leases: Competitive Leases

   Where the high bid in a competitive oil and gas lease sale is rejected as inadequate and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, the decision rejecting the bid may be set aside and the case remanded to BLM for reconsideration of the bid.

APPEARANCES: Larry White, pro se; Robert J. Uram, Esq., Office of the Field Solicitor, Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Larry White has appealed from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated November 8, 1982, rejecting his high bids of $127.98 for the 17.28 acres in parcel 96, being $7.41 per acre, and of $177.25 for the 24.39 acres in parcel 101, being $7.29 per acre, at the

competitive oil and gas lease sale held August 25, 1982. 1/ BLM stated that the Deputy Conservation Manager for Resource Evaluation, Minerals Management Service (MMS), Albuquerque, New Mexico, 2/ recommended rejection of the bids because they were lower than the MMS presale evaluation of each parcel. The MMS presale evaluation was not given for either parcel.

As to parcel 96, MMS stated:

Parcel 96 is a 17.28 acre tract located in T. 22 N., R. 13 W., section 17, Major County, Oklahoma. It received one bid for $127.98 ($7.41/acre) submitted by Larry White.

Two oil wells are located in section 17 and have cumulative productions of 53,000 bbls. and 24,000 bbls. of oil. These wells are located approximately 1/4 mile and 3/4 mile south of parcel 96.

A similar parcel, which involved accretion and riparian rights to Lot 3, section 17, which is located approximately 1/4 mile east of Parcel 96, received a high bid of $327.70/acre in December 1980. Our presale evaluation was less than this figure because of current depressed economic conditions but is much higher than the $7.41/acre bid by Larry White.

As to parcel 101, MMS stated:

Parcel 101 is a 24.39 acre tract located in T. 16 N., R. 18 W., section 11, Dewey County, Oklahoma. It received one bid for $177.25 ($7.29/acre), submitted by Larry White.

There is Morrow gas production approximately 1-2 miles west of the parcel. A Morrow well is currently drilling in section 11. (The same section that the tract is located in.) A good Oswego gas well is located 2 miles to the northeast (sec. 6, T. 16 N., R. 17 W.). In addition, acreage in this section (sec. 6) sold for $780/acre in June 1982. The presale evaluation for parcel 101 was based upon these factors, and is higher than the high bid of $7.29/acre submitted by Larry White.

Appellant states, as to parcel 96, that the oil wells cited by MMS have been producing since 1970, and the risk factor for parcel 96 is greatly increased due to significant pressure depletion and reservoir drainage of the producing zone. In addition, producing wells in the vicinity of parcel 96 require extensive acidification and fracture stimulation, which results in

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1/ Parcel 96 is for lot 1 and accreted land in sec. 17, T. 22 N., R. 13 W., Indian meridian, Oklahoma; parcel 101 is for part of lot 4 and accreted land in sec. 11, T. 16 N., R. 18 W., Indian meridian, Oklahoma.

2/ By Secretarial Order No. 3071 published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created the Minerals Management Service to, inter alia, take over the functions of the Conservation Division, Geological Survey.

very expensive completion costs. All of this tends to make the area somewhat economically less attractive. In addition, parcel 96 is a small tract comprising considerably less than a governmental drill site spaced for an oil well, decreasing the opportunity for drilling activity. Parcel 96 is situated on a sandbar in the Cimarron River and is cost prohibitive as a drill site location. As he was the only bidder at the sale for parcel 96, and many other knowledgeable persons had the opportunity to bid, he feels his high bid should be accepted.

Appellant states, as to parcel 101, that MMS neglected to mention the fact that section 11 is flanked on three sides by recent dry holes, greatly increasing the risk factor for this parcel. The three dry holes are:

1. The Williams No. 2-1-Gore which is about 1/2 mile to 3/4 mile North in section 2, T. 16 N., R. 18 W. This well was completed as a dry hole in October 1980, after being drilled to 11,820 feet T.D.

2. The Wessely No. 1-Walker which is about 1-1/2 to 1-3/4 miles South in section 23, T. 16 N., R. 18 W. This well was completed as a dry hole in September 1977 after being drilled to 11,890 feet T.D.

3. The Monsanto No. 1-Haggard which is about 1 mile southwest in Section 13, T. 16 N., R. 18 W. This well was completed as a dry hole in October 1980, after being drilled to 11,650 feet T.D.

Additionally, there is a dry hole in sec. 6, T. 16 N., R. 17 W., which is between parcel 101 and the Oswego well mentioned. Other factors which should be considered in the acceptance of his high bid include the fact that parcel 101 is a small tract much smaller than a governmental drill site spaced unit for a gas well, decreasing the opportunity for drilling activity; parcel 101 is situated on the bank of the Canadian River and is mostly submerged or is subject to submersion, making this tract of land cost prohibitive as an actual drill site location; the industry is experiencing low demand for gas to the market and pipelines have seriously restricted their acceptance of production, making gas plays economically less attractive; and the fact that no other knowledgeable bidder, having the opportunity to bid, submitted a bid. He feels that his high bid should be accepted.

Counsel for the Government responds that MMS considered the appeal of White, and affirmed its prior conclusion that the bids were inadequate. The bids of appellant are so low that under any reasonable circumstance, they cannot be considered to be fair market value. MMS reiterates that recent bidders, aware of the past production history of the producing wells in the area, still bid between $327 and $401 per acre for nearby comparable parcels.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel.

Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Co., 29 IBLA 310 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).

The Board has consistently held that while BLM is entitled to place great reliance on the technical expertise of MMS, the decision rejecting a high bid is that of BLM and, thus, BLM must analyze independently the question of sufficiency. William C. Welch, 60 IBLA 248 (1981); see also Southern Union Production, 51 IBLA 89 (1980); Steven Lutz, 39 IBLA 386 (1979).

[2] In these cases, the presale evaluation appears to have been grounded on comparable sales. Nearby parcels were sold for $327.70 per acre in December 1980, and $780 per acre in June 1982. Appellant has asserted that the present depressed state of oil and gas activity precludes such high bids at this time. Appellant's bids of less than $8 per acre are at the very low end of the range. However, appellant's bids are clearly not spurious or unreasonable. We find that the comparable sales data in these cases by itself does not support the rejection of appellant's bids.

On the present record we are unable to determine the correctness of the BLM decision on the competitive bids or the merits of appellant's arguments. The decision is deficient because it did not reveal to appellant the presale evaluation of parcels 96 and 101 or the estimated fair market value and the factual data on which it was based. 3/ This does not mean the Board will substitute its own judgment for that of the Department's experts in determining what is fair market value for the parcel, but rather that the Board will require sufficient facts and sufficiently comprehensible analysis to insure that a rational basis for the determination is present. M. Robert Paglee, 68 IBLA 231 (1982). Accordingly, we remand this case to BLM for readjudication of appellant's bid. In readjudicating the bid, BLM should consider the arguments presented by appellant in this appeal. If the bids are rejected again, BLM shall set forth the reasons for doing so completely, including the presale evaluation, so they may be addressed by appellant and considered by the Board in event of an appeal.

Appellant has raised considerable doubt whether his bids are inadequate, considering the state of the market place. For this reason, the BLM decisions must be set aside and the cases remanded to BLM to allow recalculation of the

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3/ In Southern Union Exploration Co., 51 IBLA at 95, we held that the

"[r]efusal to inform a good-faith appellant of the basis for the rejection of a high bid renders the right of appeal, which the Secretary has afforded, virtually meaningless. Regardless of whether or not an exemption is provided by the FOIA which the Department might invoke, we hold that, except to the extent that the release of certain information is prohibited by law, an appellant who has submitted a high bid, which is not clearly spurious, must be informed not only of the estimated minimum values, but the subsidiary factual data which served as the predicate for the derivation of that estimate." (Emphasis in original.)

fair market value. Since we have determined that appellant's bids may not be rejected on the basis of comparable sales data alone, if the recalculation results in a per acre evaluation such that appellant's bids can be considered adequate in the circumstances, BLM should accept appellant's bids as the high bids, and issue a lease, all else being regular.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded to BLM for action consistent with this decision.

Douglas E. Henriques
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING:

I agree that mere per-acre comparable sales data in raw form is insufficient to fix an evaluation of the subject parcels. Other factors must be taken into account, such as the size of the parcels, impediments to development by reason of the nature of the terrain, the state of the market, the availability of marketing facilities, well spacing requirements, the success or failure of other drilling efforts in the vicinity, the more or less advantageous lease terms incident to the comparable sales, etc.

I rather imagine that the pre-sale evaluation by MMS was, in fact, based upon more comprehensive data than a simple per-acre comparison of amounts paid for other leases in the area. However, since the record does not reflect the amount of each pre-sale evaluation or any cogent explanation of how each was calculated, it is impossible for this Board to make an informed judgment concerning the propriety of those evaluations, as we must do in cases of this kind. We cannot simply accept the correctness of all pre-sale evaluations as an article of faith and still preserve the integrity of this Board as an impartial tribunal for administrative review. For that reason, I concur in the main opinion.

Nevertheless, in this case appellant's bids were so low and the comparable values shown are so wildly disparate as to suggest to me that this remand is more of a procedural exercise than an anticipation that the appellant might ultimately prevail. These parcels are, after all, on a known geologic structure of a producing oil or gas field, and yet the bids offered by appellant are scarcely more than is commonly paid for rank wildcat land in the private sector. In June 1982, less than 2 miles away, acreage sold for $780; yet in August 1982 appellant bid less than one one-hundreth of that amount. While it is not impossible that appellant's bid represents the actual value, it appears to me that appellant has a heavy burden to demonstrate that such a low bid is not prima facie unreasonable.

Edward W. Stuebing,

Administrative Judge.